IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 223 of 2000

in

SPECIAL CIVIL APPLICATIONNo 554 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK BALABHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Appellant

Ms. Harsha Devani, ASSTT. GOVERNMENT PLEADER for respondents.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 22/08/2000

ORAL JUDGEMENT : (Per M.R. Calla, J.)

This Letters Patent Appeal is directed against the judgement and order dated 13.4.2000, whereby the petitioner's Special Civil Application was dismissed against the detention order dated 25.8.1999 passed by the detaining authority against the present appellant in exercise of powers under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for brevity). The detention order was passed on 25.8.1999 by the District Magistrate, Bhavnagar. The grounds which were annexed with the detention order show that on the date of passing of the detention order, six criminal cases dated 18.3.1998, 22.9.1998, 8.10.1998, 12.1.1999, 21.5.1999 and 10.7.1999, were pending against the petitioner under sections 65 and 66 of the Bombay Prohibition Act. After narrating the details of such criminal cases, the detaining authority has observed that keeping in view the anti social activities of being engaged in the business of unauthorised liquor coupled with the criminal and violent activities, the appellant was an obstacle in the matters of public health and public order. Besides the criminal cases the detaining authority has also referred to the statements made by three witnesses dated 18.8.1999 with regard to the incidents dated 17.7.1999, 12.8.1999 and 1.8.1999 respectively.

2. Regarding the contention which was raised that exercise of powers under section 9(2) of the PASA Act in this case infringed the detenu's right of making representation in respect of those statements, the learned Single Judge has held that the right of the detenu of making effective representation in respect of the anonymous statements can be said to have been infringed. However, the learned Single Judge has observed that the order of detention is passed not only on the basis of the statements of the anonymous (undisclosed) witnesses but on the basis of the offence registered against the detenu. It has been noticed that out of the six cases, a defect has been pointed out in respect of C.R. No.35/98 of Talaja Police Station and it was shown that the copy of the charge sheet counter refers to C.R. No.34/98. The learned Single Judge has observed that there is a reference to C.R. No.35/98 in another column and even if benefit of this defect is given to the detenu there remains five offences registered against him. The learned single Judge has

concluded that each of the offences is to withstand as an independent ground for detention and whereas there is no defect of any nature in these five criminal cases; the order of detention is not vitiated. So far as the proposition of law that there can be no separate detention orders for each of the grounds is concerned, no exception thereto can be taken. However, the learned counsel for the appellant has submitted that these grounds with regard to the registered criminal cases under the Prohibition Act even if taken to be existing against the appellant, they do not involve a question of any breach of public order and on the basis of these cases, at the most, a case of breach of law and order can be said to be there, which is not at all sufficient for the purpose of detention under the PASA Act. Learned counsel for the appellant cited the following cases:

(i) Piyush Kantilal Mehta v. Commissioner of Police reported in AIR 1989 SC 491.

(ii) Om Prakash v. Commissioner of Police and others, reported in JT 1989 (4) SC 177.

(iii) Rashidmiya alias Chhava Ahmedmiya Shaikh v. Police Commissioner, Ahmedabad and another, reported in AIR 1989 SC 1703.

Learned Assistant Government Pleader placed strong reliance on the recent judgement of the Supreme Court in the case of Kanuji S. Zala v. State of Gujarat and others, 1999 (2) GLH 415 and has submitted that in this decision the Supreme Court has observed in para 6 that,

> "As already stated earlier, in this case the Detaining Authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The Detaining Authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

The argument of the learned Assistant Government Pleader is that in this case also the detaining authority has mentioned in the grounds of detention that the

appellant's activities were causing an obstruction to the public health and this mention by itself should be taken to be sufficient to amount to affecting adversely the public order.

3. Learned counsel for the appellant has referred to the observations made by the Supreme Court in para 5 wherein the Supreme Court has said that the what is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. The contention is that touchstone in such cases is the presence of the credible material before the detaining authority.

4. In this case of K.S. Zala v. State of Gujarat (supra), the Supreme Court also considered three earlier decisions in the case of Piyush Kantilal Mehta (supra); Omprakash (supra); and Rashidmiya (supra) and observed in para 4 that in none of the three cases relied upon by the learned counsel, the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for consideration and that the detaining authority has not recorded such satisfaction; moreover in these three cases the detaining authority has referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public order was disturbed, whereas in the case before the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. It was also stated that the statements of the witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of public life was disturbed in those localities for some time. That material on record clearly shows that the members of public of those localities had to run away from there or to go inside their houses and close their doors.

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were

recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S. Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of

arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the mater keeping in view the observations made by the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants.

6. This Letters Patent Appeal accordingly succeeds. The impugned order dated 13.4.2000 passed by the learned Single Judge is set aside and the detention order dated 25.8.1999 passed by the District Magistrate, Bhavnagar against the present appellant is also hereby quashed and set aside. Accordingly, it is directed that the appellant, Ashok Balabhai Makwana, detained at the District Jail, Jamnagar shall be released forthwith, if not required in any other case.

(M.R. Calla, J.)

22nd August 2000 (Ravi R. Tripathi, J.)

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